

**ENTERED**

May 21, 2020

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

JOSE FACUNDO, individually and on  
Behalf of all others similarly situated,

Plaintiffs,

v.

ALMEDA-GENOA CONSTRUCTION,

Defendant.

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CIVIL ACTION NO. 4:19-cv-2721

**ORDER**

Pending before the Court is the Memorandum and Recommendation of the United States Magistrate Judge (Doc. No. 26) and the Defendant's objections to that ruling (Doc. No. 27).


Having considered the objections and issues *de novo*, the Court hereby overrules the objections and adopts the Memorandum and Recommendation, albeit with certain limitations.

The Plaintiff, Jose Facundo, has previously been a part of a Fair Labor Standards Act case against the Defendant, Almeda-Genoa Construction. *Barrera v. Almeda-Genoa Construction*, 4:18-cv-1653 (Judge Lake presiding). That case was resolved pursuant to a court approved settlement and settlement procedure. Facundo was subject to that procedure. That being the case, those individuals that did not participate in that settlement are not legally similarly situated with Facundo. Consequently, in order for a plaintiff/class member to be similarly situated, he or she must have received compensation and therefore be subject to the consequences of Judge Lake's orders in the *Barrera* case.

Therefore, the Memorandum and Recommendation of the Magistrate Judge (Doc. No. 26) is adopted and the Plaintiffs' Motion for Conditional Certification (Doc. No. 19) is granted, but is limited to only individuals that received compensation and thereby fell under the umbrella of Judge

Lake's settlement approval in *Barrera* with this modification. Defendant's objections to the Magistrate Judge's Memorandum and Recommendation are overruled.

SIGNED at Houston, Texas this 20th day of May, 2020.

A handwritten signature in black ink, appearing to read 'Andrew S. Hanen', written over a horizontal line.

Andrew S. Hanen  
United States District Judge